

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.102 of 1989

(Against the judgment of conviction and order of sentence dated 9.02.1989 passed by Mr. Basudeo Sahai, learned 3rd Additional Sessions Judge, Saharsa in Sessions Case No.48 of 1986)

- =====
1. Umesh Yadav, son of Late Turanti Yadav, resident of Farsaha, P.S.-Sour Bazar, District- Saharsa (since dead).
 2. Chandeshwari Yadav, son of late Kamleshwari Yadav (since dead).
 3. Bidyanand Yadav, son of late Kamleshwari Yadav.
(Both residents of Sohath, P.S.- Sour Bazar, District- Saharsa.
 4. Bishwanath @ Bishun Dhobi, son of Gango Dhobi, resident of village- Farsaha, P.S.- Sour Bazar, District- Saharsa.

.... Appellants

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 111 of 1989

- =====
1. Dharam Lal Yadav, son of Mushilal Yadav.
 2. Karamlal Yadav, son of Mushilal Yadav
 3. Rabbo @ Rappo Yadav, son of Nunulal Yadav.
 4. Yogendra Dusadh, son of Madho Dusadh (since dead).
 5. Ram Prasad Amat, son of Jattu Rai (since dead).
(All residents of village- Suhath, P.S.- Sour Bazar, District- Saharsa).

.... Appellants

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 112 of 1989

- =====
1. Satto Yadav, son of Hari Lal Yadav (since dead).
 2. Bido @ Bidyanand Yadav, son of Satto Yadav.
(Both residents of village-Forsaha, P.O.- Sohad, P.S.- Sour Bazar, District- Saharsa)

.... Appellants

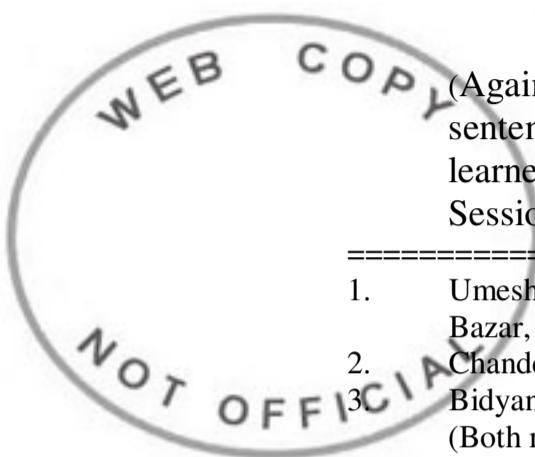
Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 122 of 1989



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1. Satto Yadav, son of Lakan Yadav (since dead).
 2. Ram Bahadur Yadav, son of Late Sukhdeo Yadav (since dead).
 3. Mahender Yadav, son of Late Ayodhi Prasad Yadav (since dead).
 4. Ram Bilas Yadav, son of Late Suti Yadav.
 5. Shiv Nath Yadav, son of Late Sakhi Yadav.
 6. Binod Yadav, son of Sri Mahendra Yadav.
 7. Jagdish Yadav, son of Late Bichkun Yadav.
 8. Rajendra Yadav, son of Late Soti Yadav.
 9. Saryug Mushar, son of Baunu Mushahar (since dead).
 10. Shibhan @ Shibu Yadav, son of Sri Nandi Yadav (since dead).
 11. Kishun Mushar, son of Raghubar Musahar(since dead).
 12. Mishri Mushar, son of Late Agarjit Mushahar.
 13. Gurkhan Mushahar, son of Sri Bijal Mushahar.
 14. Tina Mushar, son of Late Ram Adhin Mushahar.
 15. Jogendra Mushahar, son of Late Agarjit Mushahar.
 16. Jhingar Mushahar, son of Chhoti Mushahar.
 17. Rajdeo Yadav, son of Sri Nandi Yadav.
 18. Shobbal Yadav @ Shyamal Yadav, son of Sri Sukhdeo Yadav.
 19. Nageshwar Mushahar, son of Late Phulo Mushahar.
 20. Chandeshwar Mushahar, son of Sri Hakaroom Mushahar (since dead).
 21. Banarsi Mushahar, son of Chhoti Mushahar.
 22. Binchu Mushahar, son of Dorik Mushar (since dead).
 23. Jogi Yadav @ Jogendra Yadav, son of Sri Nandi Yadav.
 24. Barahmi Mushahar, son of Late Shobhi Mushahar.
 25. Ram Mushahar, son of Late Natu Mushahar.
 26. Sahib Mushahar, son of Late Agarjit Mushahar.
 27. Bouka Mushahar, son of Sri Kishan Mushahar
 28. Brahmi Yadav @ Brahmdeo Yadav, son of Late Bichkun Yadav.
 29. Saryug Yadav, son of Late Jhakush Yadav
(All residents of village- Forsaha, P.O.- Sohwat, P.S.- Sourt Bazar, District-Saharsa)

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance:**(In CR. APP (DB) No. 102 of 1989)**

For the Appellant/s : Mr. Rama Kant Sharma, Senior Advocate
: Mr. Dharmendra Kumar Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, A.P.P.

: Mr. Shiwesh Chandra Mishra, A.P.P.

For the Informant : Mr. Vijay Shankar Shrivastava, Advocate

(In CR. APP (DB) No. 111 of 1989)

For the Appellant/s : Mr. Krishna Prasad Singh, Senior Advocate
: Mr. Manindra Kishore Singh, Advocate

: Mr. Mithilesh Kumar Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, A.P.P.

: Mr. Shiwesh Chandra Mishra, A.P.P.

For the Informant : Mr. Vijay Shankar Shrivastava, Advocate

(In CR. APP (DB) No. 112 of 1989)

For the Appellant/s : Mr. Mr. Chittaranjan Sinha, Senior Advocate
 : Mr. Subodh Kumar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, A.P.P.
 : Mr. Shiwesh Chandra Mishra, A.P.P.

For the Informant : Mr. Vijay Shankar Shrivastava, Advocate

(In CR. APP (DB) No. 122 of 1989)

For the Appellant/s : Mr. Mr. Chittaranjan Sinha, Senior Advocate
 : Mr. Subodh Kumar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, A.P.P.
 : Mr. Shiwesh Chandra Mishra, A.P.P.

For the Informant : Mr. Vijay Shankar Shrivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA

And

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL**ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL)

Date: 18-05-2012

These appeals have been preferred against the judgment of conviction and order of sentence dated 9.02.1989 passed by the learned 3rd Additional Sessions Judge, Saharsa in Sessions Case No.48 of 1986 by which the appellants Nageshwar Mushar, Saheb Mushar, Gurkun Mushar, Ram Mushar, Jogi Yadav @ Jogendra Yadav, Binod Yadav, Bishan @ Bishwanath Dhobi and Jagdish Yadav have been held guilty under Section 302 of the I.P.C. and have been sentenced to rigorous imprisonment for life. No separate sentence has been passed for their conviction under Section 302/149 of the I.P.C. They have also been convicted under Sections 201, 380 & 148 of the I.P.C. and have been sentenced to undergo rigorous

imprisonment for two years each under Sections 201, 380 and 148 of the I.P.C. each and their sentences have been ordered to run concurrently.

2. The accused Mishri Mushar, Jogendra Mushar, Jhinger Mushar, Banarsi Mushar, Chandeshwari Mushar, Sukhi Mushar, Binchu Mushar, Saryug Mushar, Tina Mushar, Kishan Mushar, Brahai Mushar, Umesh Yadav, Shibu @ Shiban Yadav, Satto Yadav son of Lakan Yadav, Rajdeo Yadav, Brahamdeo Yadav @ Brahai Yadav, Ram Bahadur Yadav, Ram Bilash Yadav, Shabbal Yadav @ Shyamal Yadav, Shivnath Yadav, Saryug Yadav, Satto Yadav son of Hari Lal Yadav, Bido Baiday Yadav son of Satto Yadav, Vidyanand Yadav son of Kamleshwari Yadav, Dharam Lal Yadav, Karamlal Yadav, Yogendra Dusadh, Rabbo Yadav, Rajendra Yadav have been convicted and sentenced to undergo imprisonment for life under Sections 302/149 of the I.P.C. and further rigorous imprisonment for two years each under Sections 148, 380 and 201 of the I.P.C. each and all the sentences have been ordered to run concurrently.

3. Further accused Sabal Yadav @ Shyamal Yadav has been convicted and sentenced to undergo rigorous imprisonment for six years under Section 307 of the I.P.C. which has been ordered to run concurrently with his other sentences.

4. The accused Brahmi Yadav has also been convicted and

sentenced to undergo rigorous imprisonment for six years under Section 307 of the I.P.C. which has been ordered to run concurrently with his other sentences.

5. The accused Bilash @ Ram Bilash Yadav has been further convicted under Section 436 of the I.P.C. and has been sentenced to undergo rigorous imprisonment for six years and his sentence has been ordered to run concurrently with his other sentences in other sections of the I.P.C. Bidhichand died, as such, no sentence has been passed for the charge under Section 436 of the I.P.C. and other sections of the I.P.C.

6. The accused Mahendra Yadav, Ram Prasad Amat and Chandeshwari Yadav have been convicted and sentenced to undergo rigorous imprisonment for life under Section 302/149 of the I.P.C. and further rigorous imprisonment for two years each under Section 148 of the I.P.C. and also rigorous imprisonment for two years under Section 201 of the I.P.C. and their sentences have been ordered to run concurrently alongwith other sentences passed against them.

7. Since all these appeals have arisen out of the aforesaid judgment of conviction and order of sentence, as such, all these appeals have been heard together and are being disposed of by this common judgment.

8. It appears from the record that it was reported that 14

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appellants died during the pendency of these appeals. As such, a report was called for from the Superintendent of Police, Saharsa regarding the death of those appellants. The Superintendent of Police has reported vide letter no.1491 dated 11.04.2012 that Umesh Yadav and Chandeshwari Yadav (appellant nos. 1 & 2 of Cr. Appeal No.102 of 1989), Yogendra Dushadh and Ram Prasad Amat, son of Jattu Rai (appellants in Cr. Appeal No.111 of 1989), Satto Yadav son of Hari Lal Yadav (appellant no.1 in Cr. Appeal No.112 of 1989), Satto Yadav son of late Lakhan Yadav, Ram Bahadur Yadav, Mahendra Yadav, Saryug Mushhar, Shivan @ Shibu Yadav, Kishun Mushhar, Chandeshwar Mushhar and Binchhu Mushhar (all appellants in Cr. Appeal No.122 of 1989) died and a certificate granted by the Sarpanch of Gram Suhath has also been attached. As such, the appeals of the aforesaid appellants are abated against them. It has been reported that Teena Mushhar, son of late Ramadhin Mushar of village-Forsaha, P.S.-Saur Bazar, District- Saharsa came out from the jail 10-12 years ago, but he has not returned to his house and there is no other members in his house from which the information regarding his death could be obtained.

9. The prosecution case, in brief, is that Asho Devi (P.W.14) wife of Jaldhar Yadav (deceased) gave her fardbeyan (Ext.10) to S.I., S.J. Murmu (P.W.18) of Saurbazar police station,

district- Saharsa on 23.06.1985 at 11.30 hours at the Gohal of Jaldhar Yadav at Forsaha that in the early morning, she was brooming and sweeping inside her house. Her husband Jaldhar Yadav was sleeping in another room. In the meantime, 20-25 persons armed with arrows, bows, lathies, Bhalas and guns entered into her courtyard, all of a sudden and uttered that the members of the family of Jaldhar Yadav would be killed. After hearing this noise, her husband Jaldhar Yadav tried to flee away, but one Umesh Yadav shot fire upon him. She did not know as to whether it hit him or not some how or other Jaldhar succeeded in fleeing away while the members of the mob came inside her courtyard. She identified Nageshwar Mushhar, Mishri Mushhar, Sahab Mushhar, Jhingra Mushhar, Banarsi Mushhar, Chandeshari Mushhar, Ram Mushhar, Bauka Mushhar, Gurkun Mushhar, Umesh Yadav, Shiv Yadav, Yogi Yadav, Rajdeo Yadav, Vinod Yadav, Mahendra Yadav, Jagdish Yadav, Ram Yadav, Chanchal Yadav, Vidhichand Yadav, Ram Bahadur Yadav, all these persons were armed with bows and arrows, lathies, Bhala only Umesh Yadav was armed with gun. After seeing that her husband was fleeing away, they shot arrows which hit her son Manoj Lal Yadav (P.W.7). She dragged him in the kitchen garden. She has further stated that she also saw about 100 persons armed with various weapons entered into the house of the five brothers of her husband. She identified Vilash Yadav,

Sabal Yadav, Shatrughan Yadav, who were riding on horse and were instigating others that no one could be escaped and should be killed. She also identified Shiv Pd. Yadav, Rajendra Yadav, Shiv Nath Yadav, Jay Nath Yadav, Saryug Yadav, Satto Yadav, Dani Yadav, Ram Yadav, Yogendra Mushhar, Binchu Mushhar, Saryug Mushhar, Brahmi Mushhar, Vishwanath Dhobi, Sato Yadav, Bino Yadav, Yogendra Dushadh, Ram Prasad Amat, Yadu Yadav, Rabbo Yadav, Chandeshwari Yadav, Vidyanand Yadav, Dharam Lal Yadav, Karam Lal Yadav, Heena Mushhar, Birbal Mushhar, KIshun Mushhar and Bablu Yadav all were armed with various weapons. They were bows and arrows, which caused injuries to several persons. Horse rider Bilash Yadav lit fire in the thatched roof of Shibal Yadav. Bidhichand Yadav set fire in the house of Janardan Yadav. Shiv Prasad Yadav set fire which caused destruction of the house of the informant. In this way, thatched house of all the brothers of her husband were burning. The mob killed the members of her family and threw them in the fire. They threw 5-6 persons in the fire. She could not name those persons as the dead bodies were not fit to be identified. She has further stated that she also saw that when the houses were burning, some persons dragged her husband in the fire. His body was burnt and it was not fit to be identified. She has further alleged that the members of the mob looted the grains and other articles from the houses. They also looted

their cattle. She also came to know from her Gotani that her husband Janardan Yadav was also killed and thrown in the flame. When she came to know that the police has come, thereafter, the informant came out. It has been alleged that due to previous old enmity and litigation between her husband and Shiv Prasad Yadav, the occurrence has taken place. On the fardbeyan of the informant Asho Devi, Saur Bazar P.S. Case No.64 dated 25.06.1985 was registered under Sections 147, 148, 149, 323, 324, 307, 302, 436, 379 and 380 of the I.P.C. and Section 27 of the Arms Act. After investigation, charge-sheet was submitted. The case was committed to the court of sessions. The charges were framed against the accused including the appellants. Altogether 45 accused faced the trial. After the trial, 5 accused were not found guilty and they have been acquitted by giving them the benefit of doubt and the appellants were convicted and sentenced in the manner indicated above.

10. This Court is required to see as to whether the prosecution has been able to substantiate its case beyond all reasonable doubts against the appellants.

11. The prosecution has examined the witnesses to prove its case. They are namely, P.W.1 Jai Narayan Yadav, P.W.2 Sabir Ahmad, P.W.3 Abhinandan Pd. Yadav, P.W.4 Jai Kishore Yadav, P.W.5 Sita Ram Yadav, P.W.6 Siwan Yadav, P.W.7 Manoj Kumar

Yadav, P.W.8 Kapileshwar Pd. Yadav, P.W.9 Phool Kumari Devi, P.W.10 Neera Devi, P.W.11 Nageshwar Yadav, P.W.12 Sita Devi, P.W.13 Ramawater Paswan, P.W.14 Asho Devi, P.W.15 Ram Awatar Yadav, P.W.16 Dr. Brajindra Kumar Yadav, P.W.17 Arun Kumar Mandal, P.W.18 S.J.Murmu, P.W.19 Dilip Kumar Sinha, P.W.20 Dr. S.P. Singh and P.W.21 Chhotey Lal Yadav.

12. P.W.2 is a constable and a formal witness. He has identified the writing and signature of the Officer-in-charge S.J.Murmu. The fardbeyan has been marked as Ext.1. P.W.10 and P.W.12 have been tendered. P.W.13 has been hostile. P.W.15 is also a formal witness. P.W.21 is also a formal witness. He has taken the bloodstained soil to the Forensic Science Laboratory for chemical examination, which has been marked as Ext.5. He has also brought the forensic science laboratory report, which has been marked as Ext.19.

13. P.W.1 has stated that on 23.06.1985 prior to the sunrise, he was giving fodder to his cattle at his Darwaja. He saw that about 150 persons armed with various weapons raising alarm came there. They were instigating each other to kill the members of the family of Jaldhar Yadav. The members of the mob came to his house and looted the grains and other articles. They also looted the house of his brothers Jaldhar Yadav, Janardan Yadav, Shivan, Jay Kishore and

also the house of his brother-in-law Kapo. After looting the household articles, they set fire in their houses. They killed Jaldhar Yadav, Janardan Yadav, Ramdil Yadav, Bilo Yadav, Jagan Yadav, Umesh Yadav, Abhinandan Yadav and Arjun Yadav and threw them in the fire. He has stated that in the mob Umesh Yadav was armed with gun, Shiv Prasad Yadav was armed with Lathi, Rajendra Yadav was armed with gun, Bilash Yadav was armed with gun and riding on horse, Shamal Yadav was armed with bow and arrow and was riding on horse, Ramnath Yadav, Shivnath Yadav, Jainath Yadav, Mahendra Yadav, Binod Yadav, Pramod Yadav, Jagdish Yadav, Ramji Yadav Bidhichand Yadav, Brahmi @ Chanchal Yadav, Bishan Dhobi, Jang Bahadur Yadav, Dani Yadav, Satto Yadav, Saryug Yadav, Siwan Yadav, Yogi Yadav, Rajdeo Yadav, Nageshwar Mushhar, Saheb Mushhar, Mishri Mushhar, Banarsi Mushhar, Jhingur Mushhar, Teena Mushhar, Ghurkun Mushhar, Chandeshwari Mushhar, Ram Mushhar, Bauku Mushhar, Kishun Mushhar, Binchu Mushhar, Saryug Mushhar, Brahmi Mushhar, Birbal Mushhar, Jadu Mushhar, Bablu Yadav, Rabu Yadav, Ram Pd. Amat were armed with traditional weapons. He has further stated that accused Shiv Lal set fire in the house of Jaldhar Yadav, Bilash Yadav set fire in the house of Shiwan, Vidhichand set fire in the house of Janardan Yadav. His father Ramdeen Yadav was assaulted by Vishun Dhobi with spade. Jagdish Yadav assaulted his

father with Farsa. Jagdish put hay on the dead body of his father and lit fire. He has further stated that his brother Janardan Yadav was giving fodder to the cattle. He was chased and surrounded by Shiv Nath Yadav, Binod Yadav, Pramod Yadav, Vilalsh Yadav, Shamal Yadav, Saryug Yadav, Satto Yadav, Ram Prasad Amat and Yadu Yadav. Binod Yadav and Yogi Yadav assaulted him with Farsa. Shiv Nath Yadav, Pramod Yadav, Ram Prasad Amat and Jadu Yadav dragged and threw Janardan in the fire. He has further stated that Jaldhar Yadav was chased by the accused. He was dragged and was thrown in the fire by them. He has further stated that Jay Nath Yadav assaulted him with arrow on his arm. Ramji Yadav assaulted with arrow on his back portion. He ran and climbed on bamboo tree and also saw the occurrence. In his cross-examination, he has stated that he did not know as to whether Shiv Prasad was killed on that date or not. He does not know as to whether Parasmani, Buchkun, Kunjan, Nemani and Mahendra Mushhar were killed in his village. He does not know as to whether his brother Jaldhar Yadav was an accused in the murder of Parasmani and others. This witness has also been examined as P.W.1/A and has stated about the same fact as stated on 25.06.1987. In his cross-examination, he has stated that he did not see Shiv Prasad in the dead or injured condition in Saur Bazar Hospital. He has no information as to when Shiv Prasad was assaulted and

when he did dye. He has admitted that Shiv Prasad was killed for which Saur Bazar P.S. Case No.63/1985 was lodged against the accused in which he, his father, brother and others are the accused. He has further stated that he remained in the hospital for seven days. His statement was recorded by the Officer-in-charge after seven days prior to that. He did not disclose the name of the accused to any one. After seven days, his brother Manoj was released and he was sent to jail in the case of Shiv Prasad. He remained in the jail for four months. In paragraph 33, he has stated that he fled away and hide himself, as such, his life could be saved. All the Mushhars are of his Tola. He has also dispute with the Mushhars. He has also stated that he is an accused in Saur Bazar P.S. Case No.20/1984 regarding the loot of truck. He has further stated that Chhote Lal Yadav (P.W.21) is the step-brother of his father. Neero Devi is the daughter of Ramdil. Her husband is Kapo @ Kapileshwari Yadav. He has been cross-examined at length. From the mode of cross-examination, it appears that the defence wants to ask this witness that the occurrence of murder was held in 1977. Shiv Prasad has helped in that case and he was a witness in that occurrence. Shiv Prasad was injured. Thereafter, his co-villagers of Khajraha had taken revenge against P.W.1 and his relatives.

14. P.W.3 has also supported the prosecution case like

P.W.1. He has also named all the accused and narrated about the manner of occurrence. In paragraph 14, he has stated that he saw altogether 8 dead bodies on the place of occurrence out of which he identified the dead body of Jaldhar Yadav, Janardan Yadav, Jogen Yadav, Bilo Yadav and Ramdil Yadav. He has stated that 3 dead bodies were completely burnt and he could not identify them. He has further stated that out of fear, he has gone to village Jahra and when the matter was pacified, he returned after four days and his statement was taken by the police. In his cross-examination, he has stated that he has no information that the occurrence was taken place nor he has any apprehension of such occurrence. The reason for the occurrence is the land dispute between Shiv Prasad and Jaldhar Yadav. In paragraph 27, he has stated that Jaldhar Yadav had been cultivating the land in Batai since a long time, but Shiv Prasad was claiming land on the basis of some forged documents, but Jaldhar Yadav (deceased) did not allow to take possession of the land. Shiv Prasad was also killed on the same day at the house of Saryug Mistri by Jaldhar. He did not see the occurrence of assault to Shiv Prasad nor did he see the dead body of Shiv Prasad. He has denied that at the time of occurrence, he was not in the village.

15. P.W.4 Jai Kishore Yadav is also the brother of the deceased Jaldhar Yadav. He has also supported the prosecution case

as P.W.1 and P.W.3. He has also given the details about the occurrence. In paragraph 2 and 3, he has stated that in the occurrence, he also received injuries caused by arrow in his neck and buttock. He is also an injured witness. He was admitted in the hospital and has stated that he remained in the hospital for seven days. Thereafter, the police took his statement. From perusal of the cross-examination, it appears that this witness does not take much time in giving the answer to his queries on behalf of the defence. However, from the cross-examination, it does not appear that the defence has been able to demolish his evidence in examination-in-chief.

16. P.W.5 Sita Ram Yadav is also an injured witness. He has stated that some members of the mob also came to his Darwaja. He identified Brahmi Yadav, Pramod Yadav, Jagdish Yadav, Bidhichan Yadav, Ramji Yadav, Ram Bahadur Yadav and Teena Mushhar. Out of them, Brahmi and Pramod Yadav assaulted him by arrow, which caused him injuries. Teena Mushhar assaulted him with Lathi. He was taken to the Darwaja of Jaldhar where the police officer came. The police officer saw his condition and he was sent to Saur Bazar Hospital and thereafter to Saharsa for treatment. His statement was recorded by the Magistrate. He has identified his signature (Ext.2) on the statement recorded by the Magistrate. In his cross-examination in paragraph 13, he has admitted that he is also an

accused in the murder of Shiv Prasad.

17. P.W.6 is the eldest brother of deceased Jaldhar. He has stated that he is eldest among his five brothers. There are Jaldhar (deceased), Janardan (deceased), Jai Narayan (P.W.1) and Jai Kishore (P.W.4). Out of five brothers, Jaldhar and Janardan were killed in the occurrence. His father Ramdil was also killed in the same occurrence. He has further stated that his father and five brothers were living separately. Sita Devi is his wife. Asho Devi is the wife of Jaldhar. Phul Kumari is the wife of Janardan. Neero Devi wife of Kapileshwar @ Kappo Yadav is her sister. Kappo Yadav lives at Parsaha as Gharjamai. Abhinandan Yadav is the son of his sister Neero. Bilo Yadav is the son of Neero, who was also killed in the same occurrence. Manoj Yadav (P.W.7) is the son of his brother Jaldhar Yadav. He, Jai Narayan, Jaldhar and Jai Kishore were living in the same courtyard. He was separate. The courtyard of Janardan is in the western side from the house of Jai Narayan. He has stated that the occurrence took place before rising of the sun. The mob was telling to kill the family members of Jaldhar Yadav. When he came out from his house, he saw 20-25 persons in the courtyard. Out of them, he identified Umesh Yadav, Mahendra Yadav, Shivan Yadav, Jogi Yadav, Rajdeo Yadav, Jagdish Yadav, Bidhichand Yadav, Brahmi Yadav. Umesh Yadav was armed with gun. Shiv Prasad Yadav,

Rajendra Yadav, Shiv Nath Yadav, Jai Nath Yadav, Shyamal Yadav were riding on horse. At the time of occurrence, the wife of Jai Narayan was in her Naihar. The wife of Jai Kishore was also not there as no Gauna has taken place. Manoj, son of Jaldhar was in the village. Hare Ram and Manoranjan were in their Nanihal. He has also stated that save his life, he fled away towards south west and crossed the river. In his cross-examination, he has stated that in the murder case of Shiv Prasad, he was in custody for 3-4 months. In his cross-examination also, he has stated that on the date of occurrence, the members of the mob took the cattle from his house.

18. P.W.7 is the son of deceased Jaldhar Yadav. He has stated that on the date and time of occurrence, he was studying. 100-150 persons came from north-east corner and surrounded his house. They were searching Jaldhar Yadav and telling that the members of the family would be killed. There was also noise to loot the household articles and to set fire in the house. He identified Bidhichand Yadav, Jagdish Yadav, Yogi Yadav, Gurkun Mushhar, Saheb Mushhar, Nageshwar Mushhar (all armed with Farsa), Rajendra Yadav armed with gun, Vilash Yadav armed with gun and riding on horse. Ram Bahadur Yadav armed with Farsa, Chanchal @ Brahmi Yadav armed with bow and arrow, Mahendra Yadav armed with Farsa, Shiwan Yadav armed with Farsa, Umesh Yadav armed with gun, Ram

Mushhar armed with Farsa, Banarsi Mushhar armed with Farsa, Chandeshwar Mushhar armed with Farsa, Mishri Mushhar armed with Farsa, Jay Nath Yadav armed with bow and arrow, Bablu Yadav armed with bow and arrow, Shyamal Yadav armed with gun, bow and arrow and riding on horse, Ramji Yadav armed with bow and arrow, Dani Yadav armed with bow and arrow, Satto Yadav son of Hari Lal Yadav armed with Farsa, Yogendra Dushadh armed with bow and arrow, Bishwanath Dhobi armed with spade, Ram Prasad Amat armed with Farsa, Jadu Yadav armed with Farsa, Rabo Yadav armed with bow and arrow, Vidyanand Yadav armed with bow and arrow, Pramod Yadav armed with bow and arrow, Shiv Nath Yadav armed with Farsa, Saryug Yadav armed with bow and arrow and Satto Yadav son of Lakan Yadav armed with bow and arrow. At that time, his uncle Janardan Yadav was giving fodder to animal. Satto Yadav, son of Lakan Yadav, Saryug Yadav, Shiv Nath Yadav, Pramod Yadav, Vidyanand Yadav, Jadu Yadav, Ram Prasasd Amat, Dani Yadav, Vinod Yadav, Jogi Yadav, Shyamal Yadav and Vilalsh Yadav chased Janardan Yadav. He has also stated that Shyamal Yadav shot arrow, which caused injuries to his uncle Kishore Yadav in his neck. Jai Nath Yadav and Ram Ji Yadav assaulted with arrow to Jai Narayan Yadav. Bishwanath Dhobi assaulted his grandfather Ramdil with spade and Jagdish Yadav assaulted with Farsa and set fire after

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putting hay in his person. After seeing this occurrence, he went in his courtyard. Siwan Yadav and Umesh Yadav were in the courtyard. Umesh Yadav was armed with gun. Gurkun Mushhar, Ram Mushhar, Chandeshwari Mushhar, Banarsi Mushhar, Bauka Mushhar, Jhingur Mushhar, Saheb Mushhar, Nageshwar Mushhar and Bilash Yadav were riding on horse. His father Jaldhar fled away towards southern side after seeing the mob. Umesh Yadav shot fire at him. Thereafter, he (Jaldhar) ran towards southern side. Shiv Prasad Yadav, Rajendra Yadav, Brahmi @ Chanchal Yadav, Jagdish Yadav, Satto Yadav son of Hari Lall Yadav, Ram Bahadur Yadav, Rabo Yadav, Jogendra Dusadh, Bablu Yadav and Shatrughan Yadav chased his father towards the house of Saryug Mishri. He saw Birbal Mushhar, Banarsi Mushhar, Vishwanath Dhobi, Binchu Mushhar, Ram Mushhar, Bauka Mushhar, Kishan Mushhar, Gurkun Mushhar, Saryug Mushhar, Nageshwar Mushhar, Saheb Mushhar and Yogendra Mushhar taking out grains from the Kothi (earthen big pot). He has further stated that Shiv Prasad Yadav has set fire in his house. Vilash Yadav set fire in the house of his uncle Shiv Nandan Yadav. Bidhichand Yadav set fire in the house of his uncle Janardan. Shyamal Yadav set arrow blow, which caused injuries in his (P.W.7) thigh. He and his mother Asho Devi while coming out the courtyard saw that Vilash Yadav set fire at Yogendra Yadav and Janardan Yadav. He and his mother hide

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themselves in the back side of the house of the Upendra Yadav and saw the occurrence. He has further stated that while Tanuki Devi, his grandmother and his cousin Bilo Yadav were escaping through the corner of the Mushhari. Ram Mushhar and Gurkun Mushhar caught them. Saheb Mushhar and Nageshwar Mushhar killed Bilo Yadav and took his dead body and threw in the flame in the house of Kapo Yadav. Bidhichand Yadav, Ramji Yadav, Saheb Mushhar, Nageshwar Mushhar, Jhingur Mushhar, Mahendra Yadav, Jai Nath Yadav and Shyamal Yadav were killed Umesh Yadav, Abhinandan Yadav and Arjun Yadav in the southern-western corner of the Mushhari Tola. Binchu Mushhar, Ram Mushhar, Gurkun Mushhar, Siwan Yadav and Shyamal Yadav took the injured and threw them in the burning house of Kapo Yadav. He has also stated that Shiv Nath Yadav, Pramod Yadav, Ram Pd. Amat, Jadu Yadav, Chandeshwari Yadav, Karamlal Yadav and Dharam Lal Yadav brought Janardan Yadav and also threw him in the flame of the house of Kapo Yadav. His father Jaldhar Yadav was dragged by Chanchal @ Brahmi Yadav, Jagdish Yadav, Ram Bahadur Yadav, Rajendra Yadav, Yogendra Dushadh from the side of the house of Saryug Mishra and threw him in the flame of the house of Kapo Yadav. He has also stated that the members of the mob committed murder, looted articles and set fire in his house. After the movement of the members of the mob, the police officer came there.

Thereafter, he and his mother came out from the bush of Bhang and saw the burnt house and the dead body of 8 persons. When he went to the police, the police found them injured with arrow and sent him to Saur Bazar Hospital. In the hospital, the arrow was taken out. He has identified on the accused. In his cross-examination, he has stated that at the time of occurrence, he was the student of 10th class. He has been cross-examined at great length, but we do not find any reason to disbelieve his evidence.

It appears that his evidence is quite natural and trustworthy although he is an interested witness.

19. P.W.8 Kapileshwar Prasad Yadav is the son-in-law of the deceased Ramdil Yadav. He has stated that after the marriage, he started living in his Sasural Parsaha. He has also land and house (Kamat) in village Sohath Bharna at a distance of 1.00 K.M. from Parsaha. After hearing the noise of firing, he came fatly to village Parsaha. When he came near the bamboo trees of Bahujan Mandal, he saw that there was a mob of 100-150 persons. The members of the mob were telling that Jaldhar Yadav and his family members have to be killed. The mob was armed with various weapons. He has identified Shatrughan Yadav, Jadu Yadav, Bablu Yadav, Ram Prasad Amat, Yogendra Prasad, Shiv Prasad Yadav, Vilash Yadav, Rajendra Yadav, Mahendra Yadav, Binod Yadav, Pramod Yadav, Shiv Nath

Yadav, Jai Nath Yadav, Shyamal Yadav, Jagdish Yadav, Ramji Yadav, Brahmi @ Chanchal Yadav and Bidhchand Yadav and also identified Kishan Dhobi. Jaldhar Yadav and Janardan Yadav fled away from his courtyard. Jai Narayan Yadav was assaulted by Jai Nath Yadav and Ram Ji Yadav with arrow. Jai Kishore Yadav was assaulted by Shyamal Yadav with arrow, which caused injury in his neck. Ramdil Yadav was killed by Kishun Dhobi and Jagdish Yadav and set fire on his person putting hay. After seeing this occurrence, he took his son Abhinandan to his Kamat and again he came to village Parsaha. At that time, there were no members of the mob and he saw his father-in-law and son-in-law burnt dead. He saw 8 dead bodies. His son Bilo Yadav was also killed and thrown in the flame. The police officer came there and prepared the seizure list. The bloodstained soil was seized and seizure list was prepared which was witnessed by him and Ramautar Paswan. He has identified his signature (Ext.3) on the seizure list. Further, the bloodstained soil was seized from the eastern side of Gohali of Saryug Mishra by the police officer. Seizure list was prepared. He has identified his signature (Ext.3/1). Further, soil was seized by the police officer from the Kachi Sarak. He has also stated that bloodstained soil was also seized from the plot/field of Debu Sah near the dead body of Yogendra Yadav which has been witnessed by him and Ramautar. His signature has

been marked as Ext.3 series. He has also stated that wheat and maize were recovered from the possession of Kishun Mishra and seizure list was prepared. Rice and wheat was also recovered from the house of Mishri Mushhar, Yogendra Mushhar, Saheb Mushhar, Nageshwar Mushhar. The grain was also recovered from the house of Saryug Mushhar, Gurkun Mushhar, Bauku Mushhar, Ram Mushhar, Binchu Mushhar, Bishan Dhobi, Banarsi Mushhar. He has also stated that the burnt utensil, grain, clothes and bamboo were seized from the house of Jaldhar yadav, Jai Kishore Yadav, Ramdil Yadav, Sabin Yadav, Jai Narayan Yadav, Janardan Yadav and Debu Sah in presence of him and another witness Nageshwar Yadav. He has also stated that Nageshwar Yadav is also name of Lattar Yadav and Kapo Yadav is his alias name. He has also cross-examined at great length. The defence has failed to demolish his evidence.

20. P.W.9 is the widow of deceased Janardan Yadav. She has supported the prosecution case and has stated that the members of the mob came to his house. At that time, her husband Janardan was giving fodder to his cattle. The members of the mob came and raised alarm to kill Jaldhar and his members of the family and put them in the fire. The members of the mob looted her house and set fire. Her husband was surrounded by the members of the mob. Yogi Yadav and Binod Yadav killed her husband Janardan Yadav. After seeing the

occurrence, out of apprehension, she went to the village Sohat to the house of Triphul Devi taking both of her children. When he came to know that the police officer came, then she returned to her house and saw the dead body of her husband, his elder brother, his father and others. She identified Umesh Yadav, Mahendra Yadav, Binod Yadav, Pramod Yadav, Shiv Prasad Yadav, Rajendra Yadav, Bilash Yadav, Shyamal Yadav, Shiv Nath Yadav, Jai Nath Yadav, Jagdish Yadav, Ramji Yadav, Brahmi Yadav @ Chanchal Yadav, Bidhichand Yadav, Dani Yadav, Ram Bahadur Yadav, Bishan Dhobi, Satto Yadav, Siwan Yadav, Yogi Yadav, Rajendra Yadav, Teena Mushhar, Banarsi Mushhar, Jhingur Mushhar, Nageshwar Mushhar, Brahmi Mushhar, Mishri Mushhar, Saheb Mushhar, Yogendra Mushhar, Biltu Mushhar, Ram Mushhar, Chandeshwari Mushhar, Gurkun Mushhar, Bauku Mushhar and Kishan Mushhar, all were armed with various weapons. She has also been cross-examined at length.

It appears that her evidence is also natural and trustworthy. The defence has failed to demolish her evidence.

21. P.W.11 has stated that he came from his village Farsaha after knowing about the occurrence. He found that the house of Jaldhar Yadav and others were burnt and there were 8 burnt dead bodies. Soon thereafter, the police officer came there and recorded the Fardbeyan of Asho Devi (P.W.14), wife of Jaldhar Yadav. After

recording of the fardbeyan, he and Narayan Yadav put their signature, which has been marked as Exts.4 and 4/1. The inquest report was prepared in presence of P.W.11 and P.W.1 and both of them witnessed the inquest report. Their signatures have been marked as Exts.4/2 and 4/3. He has further stated that the police officer prepared the inquest of all the 8 dead bodies i.e. (1) Ramdil Yadav, (2) Yogendra Yadav, (3) Jaldhar Yadav, (4) Janardan Yadav, (5) Bilo Yadav, (6) Umesh Yadav, which was identified later on. The 7th was also the dead body of an unknown person, which was later on identified as of Abhinandan Yadav and the 8th was also of an unknown person. Later on the 8th dead body was identified as of Arjun Yadav. He has stated that the inquest reports of all these 8 dead body were prepared in presence of him and Narayan Yadav (P.W.1). Due to mistake, the signature of him and of Narayan Yadav could not be taken on the 8th dead body (dead body of Arjun Yadav). He has further stated that on the next day, the police recovered and seized looted articles of the occurrence from the house of some Mushhars of the Mushhari Tola and the seizure list was prepared, which was witnessed by him (P.W.11) and Kapo Yadav @ Kapileshwar Yadav (P.W.8). The houses of Mishri Mushhar, Yogendra Mushhar, Saheb Mushhar, Nagenshwar Mushhar, Saryug Mushhar, Gurkun Mushhar, Ram Mushhar, Bhutu Mushhar @ Binu Mushhar, Banarsi Mushhar

and Vishwanath Dhobit were searched and the looted grains were recovered and the separate seizure lists (11 in number) were prepared in presence of P.W.11 an P.W.8. On the third day, the police officer seized the burnt articles from the houses of Ramdil Yadav, Jaldhar Yadav, Siwan Yadav, Janardan Yadav, Jai Narayan Yadav, Jai Kumar Yadav, Kapo @ Kapileshwar Yadav and Dev Narayan Sahu, which was witnessed by P.W.11 and P.W.8. He has also stated that a kid was also burnt, but no seizure list was prepared. He has further stated that he also went to Sakali Basa with the police officer and from the members of the family of Umesh Yadav, Arjun Yadav, Abhinandan Yadav and Yogendra Yadav he also came to know that these persons were killed and burnt. In paragraph 18, he has stated that his another name is Lattar Yadav. He has denied the suggestion of the prosecution that he did not go to the place of the occurrence and he has deposed lie, as Janardan Yadav (deceased) was his brother-in-law. In paragraph 26, he has stated that first of all, police officer came in his presence. Thereafter, Asho Devi came out from the bush and narrated about the occurrence.

It appears that his evidence is also natural and the defence has not been able to demolish his evidence.

22. P.W.14 Asho Devi is the informant and one of the victims of the occurrence. She has stated that the occurrence started at

5.00 A.M. at that time, she was cleaning/ brooming in her house. Her husband Jaldhar Yadav (deceased) was sleeping in the eastern room, all of a sudden, 20-25 persons of the mob entered into her courtyard. They were armed with various weapons. They were telling that the members of the family of Jaldhar Yadav be killed. She identified Umesh Yadav armed with gun, Mahendra Yadav, Vinod Yadav, Siwan Yadav @ Shivan Yadav, Yogi Yadav, Rajendra Yadav, Jagdish Yadav, Ramji Yadav @ Samo Yadav, Bidhichand Yadav, Brahma Yadav, Ram Bahadur Yadav, Banarsi Mushhar, Jhingur Mushhar, Mishri Mushhar, Saheb Mushhar, Nageshwar Mushhar, Ram Mushhar, Chandeshwari Mushhar, Gurkun Mushhar and Bauku Mushhar. After hearing the noise, her husband escaped. Umesh Yadav shot fire and the members of the mob shot arrow at him. She did not see as to whether it hit her husband or not. Her husband escaped. The members of the mob entered into her house and looted the household articles. Her son Manoj Yadav (P.W.7) was reading on the Baithka. He came to courtyard. Shyamal Yadav shot arrow at him which hit him. She drew Manoj Yadav and hide in the bush of Bhang in the western side of her house and witnessed the occurrence from there. She saw that there were 100 persons in the mob. They surrounded the house of her husband and his brothers. She identified Bilash Yadav, Shiv Prasad Yadav, Rajendra Yadav, Pramod Yadav, Shyamal Yadav,

Shiv Nath Yadav, Jai Nath Yadav, Bishan Dhobi, Dani Yadav, Satto
Yadav son of Lakhan Yadav, Saryug Yadav, Teena Mushhar,
Yogendra Mushhar, Brahmi Mushhar, Saryug Mushhar, Binchu
Mushhar, Kishan Mushhar and Shatrighan Yadav. She has further
stated that she saw Bilash Yadav carrying gun was riding on a horse.
He set fire in the house of Shivan. Bidhichand set fire in the house of
Janardan. Shiv Prasad set fire in the eastern portion of her house. The
houses began to burn. She has further stated that when her husband
was escaping, the members of the mob followed him and dragged him
back and put him in the flame of the house. She has further stated that
they burnt Bilo Yadav, Birendra Yadav, Janardan Yadav, Yogendra
Yadav, Arjun Yadav, Umesh Yadav, Abhinandan Yadav and Ramdil
Yadav in the flame of the houses. She has further stated that her
Devers Jai Narayan (P.W.1) and Jai Kishore (P.W.4) had got arrow
bow injuries. She has also stated that there was old enmity with Shiv
Prasad prior to the occurrence and there was also litigation which had
caused the occurrence and the documents relating to the litigation and
land were burnt in the occurrence. After killing, looting the household
articles and destruction of the houses, the members of the mob moved
away. After about one and half hour of the occurrence, the police
officer came there. After seeing the police officer, she came out from
the bush. The injured Jai Narayan Yadav (P.W.1), Sita Ram Yadav

(P.W.5) and Manoj Yadav (P.W.7) also came before the police officer and they were sent to the hospital with Hajari Chaukidar. The police officer recorded her statement in the Gohal and he read over and explained the contents of her statement and after getting it correct, she put her thumb impression. At that time, Nageshwar Yadav (P.W.11) and Narayan Yadav (P.W.1) were present there. They also put their signature on her fardbeyan. She has claimed to identify all the accused and no dispute has been raised regarding their identification by this witness. She had seen the burnt houses and the dead bodies, who were killed and burnt in the occurrence. In paragraph no.31, she has stated that there was criminal case lodged by Shiv Prasad in which three members of her family were accused.

It appears that she has been cross-examined at great length. We find that her evidence is natural and convincing. The learned trial court has also noted her demeanour and she has been found weeping while narrating about the occurrence.

23. P.W.16 Dr. Brajendra Kumar Yadav was posted at Saur Bazar Hospital as I/c Medical Officer on 23.06.1985. On that date, he examined at 6.00 P.M. Sita Ram Mandal (P.W.5) and found the following injuries on his person :

(1) One punctured wound on the right scapular region including arrow.

(2) *One punctured wound on the right limb
region including arrow.*

(3) *One lacerated wound on the back of the left
foot 1 c.m x ½ c.m.x 1 c.m.*

(4) *One lacerated wound on the lateral side of the
right foot 1" x ½ c.m. x ½ c.m.*

The opinion regarding injury nos. 1 and 2 was resolved which was to be given on receipt of report from Saharsa Hospital and the rest injuries were simple in nature. Injury Nos. 1 and 2 were caused by sharp and pointed weapon such as arrow which was stiking in the injuries. The rest injuries were caused by hard and blunt substance such as lathi and by fall also. Age of the injuries was within 24 hours.

The injury report has been marked as Ext.6.

24. On 24.06.1985, he examined Manoj Kumar (P.W.7), son of Jaldhar Yadav at 8.00 A.M. in Saur Bazar Hospital and found one punctured wound on the medial side of the left thigh $\frac{3}{4}$ " x 1 C.M. x 3".

In the opinion of the doctor, the injury has been found in simple in nature caused by sharp and pointed weapon such as arrow. Age of injuries was within 24 hours. One arrow was removed from the above injury and the arrow was sent to the Officer-in-charge of Saur Bazar Police Station. The injury report has been marked as Ext.6/1.

25. On that very date, he has also examined Jai Narayan Yadav (P.W.1) at 8.10 A.M. and found the following injuries on his person :

*(1) One punctured wound on the medial side
of the left arm 1" x 1 c.m. x 5".*

*(2) One punctured wound on the left buttock
 $\frac{3}{4}$ " x 1 c.m. x 4".*

In the opinion of the doctor, both the injuries were simple in nature caused by sharp and pointed instrument such as an arrow. Age of injury was within 24 hours. Two arrows were removed from the above injuries which were sent to Saur Bazar Police Station. The injury report has been marked as Ext.6/2.

26. He has further stated that all theses injured were examined on the requisitions of the police. He has also proved the O.D. slip, which has been marked as Ext.7. He has not been cross-examined.

27. P.W.17 Arun Kumar Mandal was posted as Civil Assistant Surgeon at Madhepura Sadar Hospital. He has stated that on 26.06.1985, he conducted post-mortem examination on the dead body of Ram Dil Yadav, son of Beni Yadav, resident of village-Farsaha, a male Hindu aged about 78 years. Dr.M.M. Ansari, Deputy Superintendent of Madhepura Hospital was an observer to the post mortem examination. He has stated that the dead body was received

on 24.06.1985, which was identified by Constable Bishwanath Murmu. He has further stated that the dead body was completely burnt and charred up to the 4th degree without any injury mark on the remaining portion of the body. The injury marks could not be located as the body was completely charred and burnt and in that circumstance, no definite opinion regarding the death was given. The post mortem examination report has been marked as Ext.8.

28. On the same day, he also conducted the post mortem examination on the dead body of Jaldhar, son of Ram Dil Yadav of village- Farsaha, male Hindu aged about 45 years. His dead body was also identified by the Constable Bishwanath Murmu. The dead body was also completely burnt and charred up to 4th degree. No injury mark could be detected. In the circumstances, no opinion could be given about the nature and size of the injuries and also about the cause of death. The post mortem report has been marked as Ext.8/1.

29. On the same day, he conducted the post mortem examination on the dead body of Janardan Yadav, son of Ram Dil Yadav of the same place. The dead body was identified by the same constable Bishwanath Murmu. The entire body was completely burnt and charred up to 4th degree so no injury mark could be detected and so no definite opinion regarding nature, size and cause of death could be given. The post-mortem report has been marked as Ext.8/2.

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30. On the same day, he conducted the post-mortem on the dead body of Birendra Yadav, aged about 14 years, son of Kapileshwar Yadav of village- Jamta. The dead body was identified by the same constable. The whole body was burnt and charred up to 4th degree. The whole body was in pieces. The joint had become displaced. No injury could be located due to charring of the body. No definite opinion could be given regarding nature, size and cause of death. The post-mortem report has been marked as Ext.8/3.

31. He has stated that he also conducted post-mortem examination on the two unidentified dead bodies which were completely burnt and charred up to 4th degree. The left leg of one of the dead bodies detected from the left knee joint. No definite opinion regarding cause of death or size and nature of injuries could be given due to that. The post-mortem examination report has been marked as Exts.8/4 and 8/5.

32. On the same day, he conducted the post-mortem examination on the dead body of Yogendra Yadav, son of Bano Yadav of village-Rakhondra, P.S.- Sonbarsa. The dead body was completely burnt and charred up to 4th degree and so no injury mark could be located and so no definite opinion regarding cause of death could be given. The post-mortem examination report has been marked as Ext.8/6.

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33. On the same day, he also conducted the post-mortem examination on the dead body of Umesh Yadav (wrongly mentioned as Muni Lal Yadav) son of Bala Yadav and found that the body was completely burnt and charred up to 4th degree. No definite opinion regarding injury could be given due to charring of the dead body, 32 years, male Hindu. The post mortem examination report has been marked as Ext.8/7. All these post-mortem examinations have been conducted under the observation of Dr. M.M. Ansari, Deputy Superintendent of Madhepura Hospital.

34. In cross-examination, he has stated that the bones of the dead bodies were not burnt. He has also stated that if an injury was caused by sharp cutting weapon and of heavy type and if the injury goes up to bone, the injury would remain visible. He has also stated that on 23.06.1985 at about 6.00 P.M., he examined Sita Ram Mandal. On that day, when he came to Hospital, he saw one Sita Ram Mandal dead there. The S.I. of police Muroni had asked something in writing from him and he had given his reply separately. Both have been marked as Exts. F and G respectively (with objection). Sita Ram had one bleeding injury. Injury nos. 1 and 2 of Sita Ram Mandal would be caused on shot from behind.

35. P.W.18 S.J.Murmu was Officer-in-charge of Saur Bazar police station on 23.06.1985. On the same day at 10.00 A.M.

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Chaukidar Pulikit Paswan came at the police station and informed that some occurrence had taken place in village-Farsaha. This information was made in S.D. Entry bearing S.D. Entry No.317 dated 23.06.1985, which has been marked as Ext.9. After getting information, he went to village Farsaha with police party and reached there on 11.00 A.M. He recorded the statement /fardbeyan of Asho Devi, wife of Jaldhar Yadav at her Gohal in presence of witnesses Nageshwar Yadav (P.W.11) and Narayan Yadav (P.W.1). The fardbeyan has been marked as Ext.10. The injured Sita Ram Mandal (P.W.5), Jai Narayan Yadav (P.W.1) and Manoj Kumar Yadav (P.W.7) came before him. Seeing their injury, he could not take their statement. Seeing the injuries, the injury report was prepared and they were sent to Saur Bazar Hospital with Chaukidar Hazari Paswan. On the basis of the fardbeyan of Asho Devi (P.W.14), the case was instituted. He himself took the investigation of the case and he got prepared the inquest report on the dead body of Ramdil Yadav, son of Beni Lal Yadav by A.S.I. V.C. Choudhary, which was witnessed by Narayan Yadav (P.W.1) and Nageshwar Yadav (P.W.11). The inquest report has been marked as Ext.11. He has further stated that in presence of these witnesses i.e. P.W.1 and P.W.11, he prepared the inquest report on the dead body of Yogendra Prasad, Jaldhar Yadav, Janardan Yadav, Bilo Yadav @ Birendra, Umesh Yadav (wrongly mentioned as Muni Lal

Yadav) and of two unknown persons, which have been marked as Exts.11/1 to 11/7. He has further stated that due to mistake, he could not take the signature of the witnesses on the inquest report (Ext.11/7). He sent for photographer to take photographs of the dead bodies and deputed Defadar and Choukidar to look after them. He visited the place of occurrence, which was the houses of Ramdil yadav and his sons, which were built of thatched. He has narrated in details about the houses burnt of several persons including the houses of deceased of the occurrence. He also found the sign of destruction of Kothi (soil built godown) for keeping the grains. He also found the burnt articles of the houses. He has stated that there was bush and Bhang in the barren land between the house of Kapo Yadav and Jai Kishore Yadav. He has also stated that two dead bodies could not be identified as they were also burnt. In paragraph 34, he has stated that he also visited the other place of occurrence, which is at a distance of 500 yards south west from the first place of occurrence from the house of Janardan Yadav. The second place of occurrence is the cultivated field of Dev Nandan Sah @ Debu Sah of village Farsaha where there was huge quantity of blood. It was told by the local person that in that field Janardan Yadav was surrounded and was killed with Farsa. He has also found the footsteps of horses in the field. He has also stated that near the place of occurrence, there is

barren land and as such, the place of occurrence was visible from distance. He also visited the 3rd place of occurrence, which is 2 K.M. away in southern side from the first place of occurrence. It was told that Jaldhar Yadav was killed at the house of Saryug Mishri of village- Sohat Marna. There was a cattle shed adjacent to the room of Saryug Mishri where there was bloodstained. It found that the dead body was dragged from about 1.00 K.M. from the first place of occurrence. Grass and other plants were also lacerated. He has prepared a sketch of the place of occurrence, which has been marked as Ext.12. On 23.06.1985, he seized the bloodstained soil in presence of witnesses from the room of Saryug Mishri, which has been marked as Ext.13. He also on the same day, seized the bloodstained soil from the cattle shed of Saryug Mishri, which is at a distance of 15 cubits, which has been marked as Ext.13/1. He has also seized the bloodstained soil around the place of occurrence in presence of witnesses, which has been marked as Exts.13/2 to 13/4. He has stated that on 23.06.1985 itself, he searched Ram Prasad Amat and Yogendra Dushadh in the village Sohat Bharna, but they were absconding. He also searched the accused Shatrudhan Yadav, Yadu Yadav and Bablu Yadav in village Sohan Bharna, but they were also absconding. On 24.06.1985, the Superintendent of Police, Saharsa came to the place of occurrence at Farsaha at 9.30 A.M. and took the

statement of the informant and witnesses and in his presence, Tanuki Devi, wife of Ramdil Yadav (deceased) put her bangles on the dead body of Ramdil Yadav and said that it was the dead body of Ramdil Yadav and said she became widow. The photographer came at the place of occurrence and snapped the photographs of the dead bodies and burnt houses. All the eight dead bodies were sent to Madhepura Hospital through constable Vishwanath Murmu, Shivji Singh and others. During investigation, he searched the house of the accused and seized looted grains from several accused persons and the seizure list was prepared, which has been marked as Exts.13/5 to 13/16. He has also seized the burnt grains and remaining part of the burnt houses and other household articles from the place of occurrence, which have been marked as Exts.13/17 to 13/25. He got the post-mortem report. He sent the seized articles to the Forensic Science Laboratory, Patna for examination and later on which has been marked as Ext.14. After the investigation, he submitted the charge-sheet. In paragraph 88, he has stated that he had got the photography of the burnt dead bodies by the photographer Suresh Prasad Verma, Studio Aaina, Thana Road, Saharsa. This Studio was removed during the ante land encroachment drive. The photographs of the dead bodies have been marked as Exts. X to X/3 for identification. The photographs of the burnt houses and the cattle shed were also made by him which have been marked as

Ext.X/4 to X/6. In his cross-examination, he has admitted that negative of the photographs were not before him as the photographer did not give him. In paragraph 99, he has stated that he also examined Chandradeo @ Chandi Thakur in the counter case and also examined S.I. Dilip Kumar, who had prepared the inquest report on Shiv Prasad Yadav. The post-mortem report of Shiv Prasad Yadav was received by him on 30.06.1985. Jai Narain Yadav, son of Ramdil Yadav was arrested and he took his statement. In paragraph 110, he has stated that he did not take the statement of Saryug Mishtri or the members of his family as there was no one present in the village. He has also cross-examined at great length.

36. P.W.19 Dilip Kumar Sinha was posted as Sub-Inspector, Saur Bazar Police Station on 23.06.1985. He went to the hospital and the doctor gave him O.D. slip, which has already been marked as Ext.6. He recorded the statement of the injured Jai Narain Yadav (P.W.1) and Manoj Kumar Yadav (P.W.7) in the hospital. The broken arrow was produced by the Dr. S.P. Singh (P.W.20). He prepared a production list, which was witnessed by Bilop Kumar Gupta and Anandi Thakur. The production list has already been marked as Ext.15. The bloodstained half pant of Manoj Kumar was produced before him. The injured Jai Kishore Yadav produced a Lungi and pant, which were bloodstained and bearing some hole. The

production list was prepared in presence of the witnesses Dhirendra Kumar and Shambhu Gupta. Both these production lists were marked as Exts.16 and 16/1. The arrow, Lungi and pant have been marked as material Exts. 1, 2 & 3. In his cross-examination, he has stated that he has made station diary entry 321, which is in his writing and signature, which has been marked as Ext.A. On 23.06.1985 at 6.30 P.M., staff of the hospital came to him, which has been entered into the Station Diary Entry No.333. It is in his writing and signature, which has been marked as Ext. A/1. S.D. Entries 328, 329 and 322 are also in his signature, which have been marked as Exts.A/2, A/3 and A/4. He has also stated that on 23.06.1985, he got the message of the doctor of the hospital on the O.D. Slip that the injured Shiv Prasad died. Thereafter, he prepared the inquest report, which is not available in the case diary. The F.I.R. is in his writing and signature, which has been marked as Ext.17. In his further cross-examination, he has stated that Saur Bazar P.S. Case No.63/1985 is in his pen and signature, which has been marked as Ext.D.

37. P.W.20 Dr. S.P. Singh was posted at Saur Bazar State Dispensary as Medical Officer on 23.06.1985. On that day, he examined Jai Kishore Yadav (P.W.4) at 10.30 A.M. and found the following injuries in his body :-

(1) One arrow had pierced the right side of the

upper neck 1" below the angle of mandible. The pointed and was peeping through the mouth cavity near the lateral pharyngeal wall.

(2) One piercing wound $\frac{1}{2}$ " x $\frac{1}{2}$ " x 1" oblique over the left glutical region.

38. He has found that injury no.1 was grievous in nature and has been caused by arrow. Injury No.2 was simple and caused by sharp and pointed weapon. The arrow was made over to the Officer-In-charge in presence of S.P., Saharsa. The injury report has been marked as Ext.6/3. He has also stated that he had sent the O.D. Slip to the police station and this O.D. Slip has been prepared by him and marked as Ext.7/A. The Officer-in-charge prepared the production list for the arrow given to him in his presence and he had signed on it. The production list (Ext.15) after extracting the arrow of Jai Kishore and giving some aid, he referred to him Sadar Hospital with the function of S.I. of Saur Bazar police station. He had prepared the information slip which has been marked as Ext.18. In his cross-examination, he has stated that on 23.06.1985 was a Sunday duty. On Sunday, outdoor was not functioned, but emergency was functioned. On 23.06.1985, he was not in emergency duty, but the injured had come to his official residence and the injury was profusely bleeding and was serious. He has stated that she did not make treatment to any

injured Shiv Pd. Yadav. He cannot say as to whether he died in hospital or on that date or not. Later of Officer-in-charge and replied made by him (P.W.20) have been marked as Exts. C and D. The out door register entry is in the pen of Dr. B.K.Yadav, I/c Medical Officer, which has been marked as Ext.E.

39. The defence has also examined three witnesses. They are namely (1) Satish Chandra Verma (D.W.1) (2) Lachhami Yadav (D.W.2) and (3) Ashok Kumar (D.W.3).

40. D.W.1 is an advocate clerk, who has pressed the signature of Shiv Prasad Yadav as Ext. 'I' on a top paper. In his cross-examination, he has stated that the paper was not typed in his presence.

41. D.W.2 has stated that his house is in village Farsaha Tola- Bharana, which is at a distance of half K.M. from the Tola of Shiv Prasad Yadav. On 23.06.1985 at the time of rising sun, he was going to Farsaha through Jolaha Toli. He found near the bamboo climbs that the leg of Shiv Pd. Yadav was cut and blood was oozing out. Shiv Pd. Told him that Siya Ram and Jaldhar had come with the mob and assaulted him and fled away. He has further stated that Shiv Pd. Was taken to the hospital and his injury was bandaged by Gamachha. He also saw that mob of about 150 persons armed with various weapons were coming from Khajuraha. On the same day at

about 10.30 A.M., he saw that the mob was returning towards Khajuraha. Later on, he came to know that the house of Jaldhar was burnt. He did not know who had burnt the house. He has further stated that in the year 1977 Buchkun Yadav was killed in the house of Shiv Prasad Yadav by Siya Ram Yadav of village-Khajuraha. The house of Shiv Prasad and others were burnt. Siya Ram, Jaldhar and others were accused in the case of murder of Buchkun Yadav. In the murder case of Buchkun, Jaldhar was acquitted and Siya Ram and others were convicted. Shiv Pd. Yadav was assaulted by Siya Ram Yadav and others. In his cross-examination, he has stated that he has not received any summon from the court. Pramod has brought him for deposition. In paragraph 14, he has stated that he saw Shiv Prasad in injured condition. He did not see as to how many times, the mob moved. He did not see the police officer. Shiv Prasad did not tell him anything. He did not see Manoj, Jai Narain and others in injured condition.

42. D.W.3 Ashok Kumar was the Steno in the office of the Civil Surgeon, Saharsa. He has proved the report and certificates issued by Dr. R.N.Jha and S.D. Singh, which have been marked Ext. O/1. In his cross-examination, he has stated that both the doctors are alive. Those exhibits do not bear his signature.

43. It has been submitted on behalf of the appellants that the learned trial court has not considered the evidence of the

prosecution witnesses properly. The evidence of P.W.1, P.W.3, P.W.4, P.W.5, P.W.7 and P.W.14 are contradictory to each other with regard to manner and place of occurrence and there has been grave miscarriage of justice in convicting the appellants.

44. After hearing the learned counsel for both the parties and on perusal of the record, it appears that the occurrence has been committed by the members of mob consisting of 100-150 persons. The intention of the members of mob was to annihilate Jaldhar Yadav and the members of his family. There has been motive of mind and object of the mob was the same. The witnesses are the co-villagers and all are hailing from agricultural family and are villagers. We cannot accept minute details as stated in their earlier statement and before the Court. The contradictions do not go to the root of the case. Minor contradiction is bound to occur. The contradictions which go to the root of the case have rightly been ignored by the learned trial court. The P.Ws.1, 3, 4, 5, 6, 8, 9 & 14 have seen the occurrence and they have supported the prosecution case. Out of the prosecution witnesses, P.Ws.1, 4, 5 and 7 are the victims of the occurrence as they have received the injuries caused by the accused. P.W.9 and P.W.14 are also the sufferers of this occurrence as they have lost their husband in the occurrence. The evidence of these witnesses is quite natural and convincing as we have already observed while dealing with the

evidence of prosecution witnesses. The ocular evidence has been supported by the medical evidence of P.W.16, P.W.17 and P.W.20. P.W.16 and P.W.20 have examined injured and found the injuries on the person of the injured caused by arrow. P.W.17 has held the post mortem examination upon the dead bodies, which have been found charred and burnt. The post-mortem examination reports have been marked as Exts. 8 to 8/7. The accused have killed eight persons (1) Ramdil Yadav (2) Jaldhar Yadav (3) Janardan Yadav (4) Birendra Yadav @ Bilo Yadav (5) Yogendra Yadav (6) Umesh Yadav (7) Arjun Yadav & (8) Abhinandan Yadav and their dead bodies have been burnt in order to screen the accused from legal punishment. The minor contradictions or inconsistencies, which are immaterial did not discredit the prosecution evidence as they do not go to the route of the case and such contradiction do not effect the merit of the case.

45. It appears from the evidence of ocular witnesses that there was common object of the unlawful assembly was to annihilate the members of the family of Jaldhar Yadav. In furtherance of common intention, the members of the mob have caused the death of Ramdil Yadav and his sons Janardan Yadav, Jaldhar Yadav. They have also killed Birendra Yadav, Yogendra Yadav, Umesh Yadav (wrongly mentioned as Muni Lal Yadav), Arjun Yadav and Abhinandan Yadav in furtherance of the common object of the mob.

The members of the unlawful assembly has also caused the loot of the household articles of the victims of the occurrence, burnt their houses and also put the dead bodies in the flame of the burning houses to screen the evidence from legal punishment.

46. In this connection, a reference may be made to a decision of the Hon'ble Supreme Court in case of **Waman & Ors.**

Vs. State of Maharashtra reported in (2011) 7 SCC 295.

47. After considering the evidence on record, the learned trial court has rightly acquitted five accused persons and convicted the appellants. We do not find any ground to interfere with the impugned judgment. The impugned judgment of conviction and order of sentence is hereby confirmed.

48. During the pendency of the appeals, the appellants (1) Umesh Yadav (2) Chandeshwari Yadav (3) Yogendra Dushadh (4) Ram Prasad Amat (5) Satto Yadav son of Hari Lal Yadav (6) Satto Yadav son of late Lakan Yadav (7) Ram Bahadur Yadav (8) Mahendra Yadav (9) Saryug Mushhar (10) Shivan @ Shibu Yadav (11) Kishun Mushhar (12) Chandeshwar Mushhar and (13) Binchhu Mushhar have died. As such, the proceedings against them are abated.

49. The bail bonds of remaining 27 appellants, namely, (1) Bidyanand Yadav (2) Bishwanath @ Bishun Dhobi (3) Dharam Lal Yadav (4) Karamlal Yadav (5) Rabbo @ Rappo Yadav (6) Bido @

Bidyanand Yadav (7) Ram Bilas Yadav (8) Shiv Nath Yadav (9)
Binod Yadav (10) Jagdish Yadav (11) Rajendra Yadav (12) Mishri
Mushhar (13) Gurkhan Mushhar (14) Jogendra Mushahar (15) Jhingar
Mushahar (16) Rajdeo Yadav (17) Shobbal Yadav (18) Nageshwar
Mushhar (19) Banarsi Mushhar (20) Tina Mushhar (21) Jogi Yadav @
Jogendra Yadav (22) Brahmi Mushhar (23) Ram Mushhar (24) Sahib
Mushhahr (25) Bouka Mushhar (26) Brahimi Yadav @ Brahmdeo
Yadav and (27) Saryug Yadav are cancelled and they are directed to
surrender before the trial court to serve out the remaining sentences.

50. In the result, all these appeals are dismissed.

(Shyam Kishore Sharma, J.)

(Amaresh Kumar Lal, J.)

Patna High Court, Patna
Dated the 18th of May,
2012
N.A.F.R./V.K. Pandey/-